

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS 3<sup>RD</sup> DAY OF APRIL, 1998

BEFORE

HON'BLE MR.JUSTICE S.R. VENKATESHA MURTHY

H.R.R.P. NUMBER 142.96, 143.96, 144.96, 145.96  
and 146.96

Between:

1. Shankara Rao Tukaram Lad, since deceased by his L.Rs:
- 1A. Shashikant Shanmkar Lad, occ. advocate.
- 1B. Suresh Shankar Rao Lad. occ. business.
- 1C. Sanjay Shankar Lad. occ. business.
- 1D. Smt. Laxmibai wife of Shankar Lad.
- 1E. Smt. Rekha wife of Vasant Lad.
- 1F. Kumari Sheetal d/o Vasant Lad, Minor.
- 1G. Sri. Vishal son of Vasant Lad, aged 14 years.
- 1H. Smt. Sunanda w/o Rajan Yadhav.
- 1J. Smt. Chaya w/o Appasaheb Savakar.

Respondents 1F and 1G are minors by their natural guardian mother Sl.No.1E. All are majors, r/o Jamkhandi, Dist. Bijapur.

PETITIONERS.in  
all HRRPs

( Sri. M.B.Naragund for petitioners in all)

And:

Ibrahim Allabax Pandhari,  
aged 37 years, trader of  
Jamkhandi. RESPONDENT HRRP 142.96

Thippanna son of Mallappa Jambagi,  
Major, resident of Jamkhandi,  
Dist. Bijapur.

RESPONDENT HRRP 143/96

Smt.Radhabai w/o Govind Shinde,  
Major, k household work and business  
of Jamkhandi.

RESPONDENT HRRP 144/96

1. Shri. Janardhan Laxminarayana Bhat,  
aged 45 years, Hotel business,  
r/o Jamkhandi.

2. Sri.,Govind Laxminarayan Bhat,  
age 40 yrs. hotel business,  
r/o Jamkhandi.

RESPONDENTS HRRP 145/96

Manohar son of Balkrishna Suryavamshi,  
major, occ. Trader of Jamkhandi.

RESPONDENT HRRP 146/96

(Sri. A.V.Albal for respondent in all)

HRRPs 142/96, 143/96, 144/96, 145/96  
and 146/96 are filed under section 115 of CPC  
against the order dated 21-9-1998 passed in  
RRPs 44/89, 42/89, 41/89,47/89, and 43/89  
respectively on the file of the Ist Addl.Dist.  
Judge, Bijapur, allowing the revision petition  
and setting aside the order passed in HRC No.  
16/77, 15/77,18/77,13/77, and 17/77 dt.  
15-9-1989 by the Prl. Munsaiff, Jamkhandi,  
allowing the petition filed under section 21  
(1)(a) (h) and (f) of KRC Act.

These revisions being reserved for orders this  
day, the Court made the following:

O R D E R

HRC 13 and 15 to 18 of 1977 are filed on the file of the Principal Munsiff, Jamkhandi for eviction of the respective respondents under section 21 (1)(a) and (h) of the Karnataka Rent Control Act, 1961 (hereinafter called as the Act).

2. The trial court directed eviction of the respective respondents under section 21 (1)(a) and (h) of the Act. The respondents-tenants filed Revision petitions to the District Judge and the District Judge set aside the order of eviction under section 21 (1)(a) and (h) of the Act. The owner has preferred the Revisions HRRPs 142 to 146 of 1996, challenging the order of the learned District Judge, dismissing eviction petitions. Having regard to the fact that the petitioner who is the owner of the properties in question and having regard to the fact that eviction under section 21 (1)(h) was sought of all the tenants on a common ground, I am of the opinion that these revisions should be consolidated for purpose of disposal by a common order.

3. The parties are referred to according to their array in the trial court.

4. The deceased Shankara Rao Tukaram Lad purchased CTS No.1426 at Jamkhandi in an auction held by the Income Tax Department on 16-12-1973. The sale was subsequently confirmed by the Income Tax Department and a sale certificate was issued to the deceased petitioner. The deceased petitioner was thereafter involved in a litigation with the erstwhile owners of the property CTS No. 1426 and the matter was decided against their erstwhile owners upholding the title of the deceased petitioner. The respondents in these cases are tenants in occupation of the specified portions of the CTS No.1426 which consists of a cinema theatre, and various other portions separately held by the tenants, some of whom are the respondents herein.

5. The common contention of the respondents was that there was no relationship of landlord and tenant between them and the deceased petitioner; that no title stood conveyed to the petitioner by virtue of the

auction held by the Income Tax Department on the ground that the property was a trust property endowed for the benefits of students of the Vaddar Community.

6. The contention of the respondents-tenants so far as they related to challenge to the petitioner's title is concerned, is now conclusively negatived.

7. HRC 13/77 was instituted against two respondents-Janardhan Laxminarayan Bhat and Govind Laxminarayan Bhat under section 21 (1)(a) and (h) of the Act. By a notice Ex.P.4 dated 12th March, 1975, the petitioner informed the respondents who were running a hotel under the name and style Amba Bhavan that with effect from 16-12-1973, the respondents were liable to pay rent to the petitioner at the rate of Rs.,450/- per annum and also demanding that the petition premises be surrendered to them to enable the petitioner's son to start a sanitary wear business in the premises. The respondents, by a notice Ex.P.5 dated 20-3-1975, pleaded that they were compelled by the Municipality to pay a sum of

Rs.,875/towards arrears of tax from January to March, 1975 and therefore, they are not liable to pay rent to the petitioner. The claim of the petitioner for personal occupation was denied.

8. H.C 15/77, the respondent Thippanna Mallappa Jambgi was sought to be evicted for non-payment of rent at the rate of Rs.300/per annum with effect from 19-12-1973. Setting up of the petitioner's son in business was also sought to be pleaded, besides the premises being required for construction of a box office, as the need for eviction. By a notice dated 12th March, 1975, Ex,P.4, the respondent who is running a hair cutting saloon under the name Liberty Hairs Dresses, was called upon to pay of the arrears of rent due from 19-12-1973 as also to comply with the demand of the petitioner. The respondent received the notice and did not apparently reply and disputed the title of the petitioner to the property on the same ground as pleaded by other tenants.

9. HRC 16 of 1977 was instituted against Ibrahim Allaудin Pendhari-the respondent under section 21 (1)(a) and (h) of the Act. The respondent was called upon by a notice Ex.P.3 dated 12-3-1975, to pay the agreed rent of Rs.,.500/- per annum with effect from 19-12-1973 the date of purchase in the auction. The respondent contested the claim of the petitioner under sections 21 (1)(a)and (h) of the Act alleging that the rent for the premises was only 150/- per annum and that rents were paid by him to the former owner Sathyappa Sidramappa Jamkhandi and the successor trustees by paying taxes and by payment to the trust. The claim of the petitioner for eviction under section 21 (1)(h) was also denied.

10. HRC 17/77 was instituted against one Manohar Balakrishna Suryavamshi alleging that he was running a hotel under the name Panduranga Hotel on the part of the premises no.CTS 1426 at Jamkhandi and that he was liable to pay Rs.800/- per annum as rent being the sub-lessee of Annappa Ganu Shinde. The respondent was called upon to pay the rent with

effect from 19-12-1973. The respondent replied to the notice alleging that the hotel is run by the widowed three daughters- Radhabai, Sonubai and Janabai and that he is the son of Sonubai but the licence, however, stands in his name. The rate of rent was not however denied. The need for eviction under section 21 (1)(h) of the Act however was denied by the respondent.

11. HRC 18 of 1977 was instituted by the petitioner under section 21 (1)(a) and (h) of the Act against Radhabai Govind Shinde and Lalasaheb Khadirsahab @ Khajahusan Shaikh alleging that the respondents are in occupation of an area 8 feet east to west and 15 feet north to south on a rent of Rs.800/-per annum. By a notice dated 12-3-1975, the rent from 19-12-1973 at Rs.800/- per annum was demanded and the respondent denied the claim. The claim of the petitioner for eviction on the ground of personal need was also denied. The respondents however, asserted that the rent was Rs.300/per annum. The claim of the petitioner was denied so far as eviction under section 21 (1)(h) of the Act.

12. The trial Judge held that there was relationship of landlord and tenant between the petitioner and the respondents and that the respondents had not paid the admitted rent within the time stipulated under section 21 (1)(a) of the Act and therefore, the respondents-tenants were not entitled to contest the petitioner's claim . The trial court ordered eviction both under section 21 (1)(a) and (h) of the Act. In Revision, the District Judge, set aside both the orders and dismissed the eviction petitions.

13. The grievance of the petitioner is that the order of the District Judge in revision is unsustainable and contrary to law. The District Judge, who heard the revisions came to the conclusion that the notices issued to the respondents-tenants by the petitioner-landlord was invalid by reason of combining the demand for attornment and the arrears of rent with effect from 16-12-1973. The learned District Judge held that there was a bonafide dispute between the petitioner landlord and the respondent tenant so far as it pertained to title to the property by reason of

a challenge to petitioner's title by the alleged trustees of the property in question the trustees attacking the auction sale by the Income Tax Department in favour of the petitioner as being void. Admittedly, the litigation between the trustees and the petitioner ended some time in the year 1983 giving a quietus to the litigation. Thereafter, the respondents-tenants have made various payments in court admittedly from 1983 onwards but not making up the claim made in the notice, even at the admitted rate.

14. All the respondents-tenants were served with notices demanding arrears of rent with effect from the date of purchase by the petitioner is undisputed. The defence that was sought to be raised by the respondents-tenants did not pertain to any right asserted by them as against the petitioner-landlord. All that they contended was that the petitioner's title to the property by reason of the purchase in the auction conducted by the Income Tax Department was invalid on account of the fact that the property was the subject of a trust created for the benefit of students belonging

to Vaddar community. It was not the case of any one of the respondents-tenants that they constituted the trustees and the petitioner's claim was not therefore acceptable to them. The litigation that was fought, and culminated in the dismissal of RA 33 of 1981 on the file of the Civil Judge, Gokak, pertained to the heirs of one Satyappa claiming title to the property under a will dated 26-3-1953 and of the liability of the plaintiff-appellant to satisfy the claim by sale of the schedule property namely CTS 1426 of Jamkhandi. The decision of the learned Civil Judge which is marked as an exhibit in all the cases show that the claim was barred under section 67 of the Income Tax Act and was not tenable. It is therefore clear that the litigation that was put forward as an excuse for non-payment of rent to the petitioner had nothing to do with the liability of the respondents-tenants to pay the rent with effect from 16-12-1973 the date of auction purchase by the petitioner.

15. It was not the case of the respondents-tenants that by reason of the suit instituted by the heirs of Sathyappa, they were

prevented by any order of a court not to pay rents to any person other than including the respondents herein. Indeed, the respondents-tenants did not allege that they had any doubt as to who is the person who was entitled to receive the rent consequent on the service of the notice claiming rent by the petitioner herein. Indeed, the respondents-tenants had an option of availing the remedy provided under sub-section 3 of section 19 of the Act., so that, their interests were protected. Sub-section 3 of section 19 deals specifically with an identical situation as found in this case. The respondents-tenants were admittedly inducted into the premises by Jamkhandi brothers the erstwhile owners of the property. The petitioner-landlord not only intimated the respondents of the purchase of the property but also called upon the respondents-tenants to pay the rent with effect from 16-12-1973. The respondents, either by reply notice or by filing a counter in the eviction petition, denied the validity of petitioners title and not the factum thereof. The validity of the sale in favour of the petitioner on the ground

set up by the respondent was one which they could not have raised inasmuch as the heirs of Satyappa were already litigating about it. If in such a situation, the respondents found themselves in a dilemma as to who is the person entitled to receive the rent, the clear option was to resort to section 19(3) of the Act, the moment the notices demanding rent were issued. Indeed, I am unable to persuade myself to believe that the respondents-tenants had any bonafide dispute regarding title to the property of the petitioner. Indeed, they were unconcerned, if both the petitioner and Satyappa contended that they were the owners of the property, ~~and~~ <sup>and</sup> they could have availed the remedy as provided under section 19(3) of the Act and protected themselves from eviction. Not having resorted to the remedy under section of the Act, the assertion of respondents that the legal heirs of ~~Satyappa~~ were the owners of the property could not be regarded as a bonafide dispute regarding title to the property in question. Indeed, they had no contest, so far as petitioner's title to the

property was concerned, but for an assertion that Satyappa's heirs were contesting the validity of petitioners' title.

16. Respondents-tenants not having availed the remedy under section 19(3) of the Act, it would not be open to them to contend that there was a bonafide dispute regarding title to the property between them and the petitioner. The learned District Judge's finding, in the circumstances of the case, regarding a bonafide dispute between the petitioners and the respondents, about title to the property is clearly unsustainable.

17. The finding of the learned District Judge that the notice demanding rent and for attornment to the owner, by a single notice was invalid, is clearly unsustainable in law. The learned District Judge sought to rely upon the decision reported in BASHA BAIG VS. CHOODANATH( ILR 1998 Kar. 1632) to support his view. The controversy in Basha Baig's case was whether a notice demanding arrears of rent under section 21 (1)(a) the Act could be issued by only those persons who have acquired title

to the property at the partition,- the lease being prior to the partition. The Court held that only those persons to whose shares the leased out property came, could issue notices demanding arrears of rent and not rely upon a notice that had been issued prior to the partition. Indeed para 11 of the Judgment in Basha Baig's case deals with the contentions regarding eviction under section 21 (1)(a) of the Act and there is absolutely no finding about a notice being invalid by reason of its combining a demand for attornment and arrears of rent. The finding recorded by the learned District Judge about the claim for eviction under section 21 (1)(a) of the Act being invalid for the reason given by him. In my opinion, is without any basis. Indeed there is no provision of law which prohibits a demand being made by way of a notice for attornment and for arrears of rent. The learned District Judge's order denying eviction under section 21 (1)(a) of the Act is unsupported by any authority.

18. The trial Judge found that each one of the respondents-tenants had not complied with section 29(1) of the Act by not depositing the rent with effect from the date of purchase by the petitioner. The Munsiff also found that the respondents had no sufficient cause for non-payment of rent within two months next after the service of the notices on them.

19. In HRC 13/77, the rate of rent was Rs.450/- per annum is admitted. The defence of the respondent was that on the date of notice, he had been called upon to pay municipal taxes of Rs. 875/- in 1975 January to March and having paid the same, he was not liable to be evicted. In evidence, no such defence was established and on the other hand, the respondent No.2 admits that prior to 1973, he had paid rent to the Income Tax Department. He admits that he had not paid any rent, after December, 1973, to any one. That being so, the respondents in the case are not entitled to protection from eviction under section 21 (1)(a) of the Act by reason of non compliance of section 21 (2) of the Act. The order of the

District Judge reversing the decision of the trial court on this aspect of the matter would have to be reversed and the order of the Munsiff restored.

20. The respondent-tenant in HRC 15 of 1977 has deposited rent as per Ex,D3, D.4 and D5 i.e., for the period between 1-11-1982 to 1-11-1988. He claims that the rent prior to 1982 has been paid to one Jeeva, for which there was absolutely evidentiary support. The said Jeeva was not examined as a witness in the case. Thus, it is clear that the respondent did not prove the discharge pleaded by him and indeed could not have raised a defence of that nature, not having resorted to section 19(3) of the Act to demonstrate his bonafides. Therefore, the trial Judge was right in coming to the conclusion that none of the circumstances, enumerated in section 21 (2) of the Act had been established by respondent-tenant to avail protection from eviction under section 21 (1)(a) of the Act. The eviction of the respondent-tenant has therefore to be restored.

21. The respondent in HRC 16/77 has asserted that he has paid rent upto 1980 to one Jeeva and has even failed to prove the same. There was indeed no justification for the respondent to have paid rent due to Jeeva subsequent to the notice demanding arrears of rent as per Ex.P.3. The trial Judge rightly directed the eviction of the respondeent-tenant under section 21 (1)(a) of the Act for non-compliance with section 21 (2) of the Act. The order of the District Judge reversing the finding and the eviction of the respondent-tenant under section 21 (1)(a) of the Act is without basis in law and cannot be sustained.

22. The respondent in HRC 17/77 has come up with a defence that his mother and his sisters have succeeded to the tenancy on the death of of his mother's grand father. Admittedly the licence for the hotel stands in the name of the resopndents since 1972.His claim that his mother and his sisters inherited the tenancy is unsustainable as the premises in question is a non-residential premises and under section 3 (r) of the act, the tenancy

rights in respect of non-residential premises are not heritable. ( ABUDUL SUBHAN VS. A.K.Sathyamangal Shetty, 1984(2) KLJ P72). In the circumstances, it is the respondent alone who is liable to answer the petitioner's case. So far as discharge of the rent is concerned, the respondent has sought to make out that he has paid municipal taxes; that he has paid the rent to Jeeva. The rent from 1988 is deposited by him as per Ex.D.19 to D.21. What is surprising is the production of xerox copies of receipts for payment of municipal taxes, without stating to prove the originals. In any event, the respondent could not have any explanation for non-payment of rent due as on the date of the notice within two months next after the receipt of the notice. The reply to the notice Ex.P.5 does not seek to rise any defence of discharge. In the circumstances, the finding of the trial court of the respondent's liability for eviction for non-compliance with all the circumstances enumerated in section 21 (2) of the Act cannot be assailed. The respondent-tenant was rightly held by the trial court to be not entitled to protection from eviction under section 21 (2) of the Act.

23. The case of the respondent in HRC 18/77 so far as section 21 (1)(a) is concerned, is not different from the case of the respondents in HRC 15 and 17/77 referred to above. The rate of rental was held to be Rs.300/- per annum and the respondent admittedly deposited the rent from 1-11-1982 at the rate of Rs.300/- per annum, but did not deposit the rent from 19-12-1973, she deposited rent only from July 1975 to November, 1982. As already observed, the respondent cannot sustain her defence regarding bonafide dispute regarding title to the property for reasons already given. The order of the trial court directing eviction of respondent-tenant from the premises for failure to prove of the circumstances enumerated under section 21 (2) of the Act would have to be restored setting aside the order of the District Judge in revision.

24. The case that is sought to be made out for eviction of the respondents-tenants under section 21 (1)(h) of the Act has been found to be not established by the District Judge. The reason that has been given by the

District Judge for negativing the claim of the respondent-tenant was two folds. One is that on the death of the original landlord, the right of the landlord stood abated. The second reason is that one of the son Vijay, for whom a sanitary ware shop was sought to be established died during the pendency of the case and so the need did not survive; that another son is an advocate and that another son is otherwise engaged in business and therefore, the cause did not survive so far as the need for demolishing the schedule premises in each case for purposes of constructing a booking office and construction of a waiting room. Admittedly, the deceased petitioner was running a cinema theatre and on his death, his legal representatives have prosecuted the claim. The cinema theatre business is inherited by the legal representatives and there was nothing personal to the deceased petitioner so far as the need relating to the running of the cinema theatre. Therefore, to that extent, the cause did <sup>survive</sup> ~~subsist~~. Whether or not the case so far as Vijay was concerned subsisted or not the District Judge, in revision, found that the need set up by the petitioner had not been

established and I agree with the conclusion drawn by the learned District Judge so far as eviction under section 21 (1)(h) of the Act is concerned. Therefore, the petitioner-landlord would not be entitled to eviction under section 21 (1)(h) of the Act is concerned. The petitioner-landlord would not be entitled to eviction under section 21 (1)(h) of Act and the decision of the District Judge is not open to challenge in revision.

25. On behalf of the respondents, reliance was placed upon a number of decisions pertaining to the scope of the revisional jurisdiction of this Court. They are M/S BHOJRAJ KUNWARJI OIL MILL AND GIVVING FACTORY AND ANOTHER VS. YOGRAJSINHA SANKERSINHA PARIHAR AND OTHERS (AIR 1984 SC 1984) DR. A.S.RASHID AHMED VS. GOPALAKRISHNA KAMATH (ILR 1991 Kar. 3648). In the instant case, the finding recorded by the District Judge so far as section 21 (1)(a) of the Act is concerned, is unsubstantiated, as the learned District Judge misread the decision in Basha Baig's case and his finding regarding the existence of a bonafide dispute between the petitioner and the

respondents was a clear exercise of his jurisdiction illegally which cannot be sustained. The learned District Judge could not have upset the decision of the trial Judge for the reasons given by him. In the circumstances, the revisions deserves to be allowed and the respondents-tenants are liable to be evicted under section 21 (1)(a) of the Act, by restoring the decision of the Munsiff on this ground of eviction. Respondents-tenants are granted three months' time to surrender vacant possession of the premises with costs.

Sd/-  
**JUDGE**

S

PV.